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GOVERNOR

CURTIS M. EOFFIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD  
THE DIVISION OF PROCUREMENT SERVICES  
DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-2329

JOHN ST. C. WHITE  
INTERIM MATERIALS MANAGEMENT OFFICER  
(803) 737-0600  
FAX (803) 737-0639

September 23, 2014

HUGH K. LEATHERMAN, SR.  
CHAIR, SENATE FINANCE  
COMMITTEE

W. BRIAN WHITE  
CHAIR, HOUSE WAYS AND MEANS  
COMMITTEE

MARCIA S. ADAMS  
EXECUTIVE DIRECTOR

Darlyn B. Adams, CPPO, CPPB  
Procurement Officer  
Horry County School District  
335 Four Mile Rd.  
Conway, SC 29526

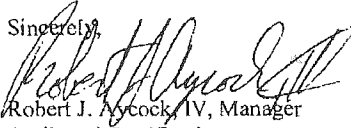
Re: Opinion Letter for Horry County School District Procurement Code

Dear Ms. Adams:

I am writing in response to your request dated August 29, 2014, for a written opinion regarding your district's proposed procurement code and regulations.

On March 4, 2014, Horry County School District requested that we approve a local vendor preference in lieu of the resident vendor preference appearing in the current version of our model school district procurement code, a preference drafted to be virtually identical to the resident vendor preference established by S.C. Code Section 11-35-1524. By letter dated April 11, 2014 (attached), we notified the District that we did not find the local vendor preference requested to be substantially similar with the State's Consolidated Procurement Code. Several months later, on August 29, 2014, the District again submitted a draft procurement code using the exact same language for a local vendor preference submitted in March, only this time the local vendor preference was offered as a supplement to the model code's resident vendor preference. We find no material differences in these requests. The written determination previously provided to the District in our letter dated April 11, 2014 remains unchanged. Simply stated, the State's Consolidated Procurement Code has no parallel for a local vendor preference or for removing the State Code's resident vendor preference.

Sincerely,



Robert J. Nycock, IV, Manager  
Audit and Certification

c: ✓ Dr. Cindy Elsberry, Superintendent of Schools  
John K. Gardner, Chief Financial Officer  
Delbert H Singleton, Jr., Division Director  
John St. C. White, Interim Materials Management Officer

Attachment

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Tuesday, October 14, 2014 3:25 PM  
**To:** Brent Jeffcoat  
**Cc:** Kenneth L. Childs  
**Subject:** RE: Horry

I have not

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Brent Jeffcoat [<mailto:bjeffcoat@popezeigler.com>]  
**Sent:** Tuesday, October 14, 2014 3:03 PM  
**To:** Keith R. Powell  
**Cc:** Kenneth L. Childs  
**Subject:** Horry

Have you been contacted in the last few days about construction plans?

Brent Jeffcoat	(980) 225-1125	Charlotte
Pope Zeigler, LLC	(803) 354-4919	Columbia
<a href="mailto:bjeffcoat@popezeigler.com">bjeffcoat@popezeigler.com</a>	(803) 422-6579	Cell

Ally Center 8th Floor	1411 Gervais Street, Suite 300
440 South Church Street	P.O. Box 11509
Charlotte, NC 28202	Columbia, SC 29211

**Sheri L. Wainscott**

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**From:** Keith R. Powell  
**Sent:** Monday, November 10, 2014 1:44 PM  
**To:** William F. Halligan  
**Subject:** hcsd

[http://horrycountyschools.granicus.com/GeneratedAgendaViewer.php?view\\_id=2&clip\\_id=132](http://horrycountyschools.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=132)

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**Horry County Board of Education**



**Board Meeting**

**Monday, October 27, 2014**

**Location: District Office - 335 Four Mile Road, Conway, SC**

**Board Dinner - 5:00 p.m., Room C-107**


**1. Opening October 27, 2014 at 6:00 p.m. - Call to Order**


A. Invocation, Pledge of Allegiance - Myrtle Beach High School Navy JROTC

B. Approval of Agenda

As required by SC Law 30-4-80, local news media were informed of the date, time, place, and agenda of this meeting. Copies of the agenda were posted at the district office and distributed to schools for posting.

C. Approval of Minutes (October 13, 2014, October 20, 2014)

October 13, 2014 Minutes 

October 20, 2014 Minutes 

**2. Public Comments**

**3. Recognitions**

- National Blue Ribbon School - Socastee Elementary

**4. Committee of the Whole**

A. Facilities

1. Energy Efficient Proposal Information - Mr. James

2. Capital Finance Plan and Timelines - Mr. Gardner

Capital Plan Summary 

3. Energy Positive Design - Mr. DeFeo



4. Delivery Methods of Schools - Mr. Keith Powell

Delivery Methods and Source Selection Methods Chart

a. Procurement Requirements

HCS Procurement Code Excerpt

UWPD Architecture Letter

Guidelines Memo

RFQ Process Memo

RFQ for Professional Design Services Memo

5. **Discussion**

A. Human Resources Committee Update - Janice Morreale

B. Superintendent Report

1. Report on Cabinet Meetings

2. Principal for the Day

6. Executive Session for Negotiations Incident to the Sale of Property and Receipt of Legal Advice

7. **Business**

A. Horry County Cleanup Event - Joe DeFeo

Horry County Cleanup Event Letter

Horry County Cleanup AAF

B. Consider Sale of Property

8. **Consent Agenda**

A. Personnel Recommendations as Required by Law

B. Monitoring Report: Operational Expectations 3 - Treatment of Stakeholders

Faith-Based Cabinet & Closing the Achievement Gap Agenda

Operational Expectations 3 - Treatment of Stakeholders REVISED

- C. Monitoring Report: Operational Expectations 6 - Financial Administration

Operational Expectations 6 - Financial Administration REVISED

- D. Monitoring Report: Results 8 - Perception of Stakeholders

2014 District Survey Graphs

Results 8 - Perception of Stakeholders

- E. Monitoring Report: Operational Expectations 10 - Instructional Program

Operational Expectations 10 - Instructional Program

- F. Education Fund Distribution for District 5

Education Fund Distribution AAF - D5

**9. Executive Session for the Evaluation of the Superintendent**

**10. Adjournment**

## Sheri L. Wainscott

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**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Friday, October 23, 2015 2:47 PM  
**To:** Ara Heinz  
**Cc:** rmaxey@horrycountyschools.net; jgardner@horrycountyschools.net; joedefeo@horrycountyschools.net; davidcox@horrycountyschools.net; Kenneth L. Childs; Keith R. Powell; Aaron Thomas (athomas@metconus.com)  
**Subject:** RE: RFP 1415-91 Negotiation Status  
**Attachments:** Heinz, Ara L01 re response to 10-21-15 email, 10-23-15.pdf  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Ms. Heinz,

Please find attached our response to your below Wednesday, October 21, 2015 email.

Best Regards,



Robert W. Ferris, AIA, REFP, LEED AP  
CEO/President  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Cell: 919.610.2251  
Fax: 919.573.6355  
[rferris@sfla.biz](mailto:rferris@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

---

**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, October 21, 2015 5:42 PM  
**To:** Robbie Ferris; Robbie Ferris  
**Cc:** Danielle Davis  
**Subject:** RFP 1415-91 Negotiation Status  
**Importance:** High

Mr. Ferris,

The motion approved by the Horry County Board of Education at its October 12, 2015 meeting authorized "contract negotiations for each project in rank order." The procedure for this is set forth in Article IV.A.9.h of the HCS Procurement Code.

Since the price negotiations with Firstfloor Energy Positive, LLC on Tuesday, October 20, 2015, did not result in a price within the Board-approved budgets for each of the five schools, the District will be conducting negotiations with the second ranked entity.

We will notify you at a later time, but as soon as possible, concerning further negotiations or procedures under HCS Procurement Code Article IV.A.9.h. Please contact me if you have any questions about this process.

Regards,  
*Ara*

Ara Heinz | Procurement Services | ☎ P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)





October 23, 2015

VIA EMAIL ONLY

Ara Heinz  
Procurement Services  
Horry County Schools  
335 Four Mile Road  
Conway, SC 29526

Re: RFP 1415-91 Negotiation Status

Dear Ms. Heinz:

I am writing in response to your email dated October 21, 2015 in which you informed Firstfloor Energy Positive, LLC the Horry County School District will be conducting negotiations with the "second ranked entity" in this proposal negotiation process. We are not aware of any deficiencies in our proposal and are unclear as to the District's decision to begin negotiations with another entity. We have concerns this has not been a good faith negotiation process because we were never told during our negotiations our proposal needed to be within the "board approved budgets" as stated in your email. Further, based on the October 12, 2015 presentation by your financial advisor, Brian Nurick, it was our understanding the board intended to increase the budget at their next meeting. In order to resolve any misunderstanding, we believe it is important to explain and highlight the following regarding our proposal:

1. To our knowledge, we are the only entity to have submitted a qualified proposal.
2. To our knowledge, we are the only entity that can meet and deliver on all of the specifications required in the RFP under the South Carolina procurement law.
3. Based on conversations with our bonding company, we believe we are the only team that will guarantee via performance bond that our buildings will generate more onsite power than the school buildings will consume.
4. To our knowledge, we are the only team that agreed to meet the schedule requirements outlined in the RFP.
5. Our design is Ashrae 189.1 compliant.
6. Our team is the only team that has designed, built, and operated energy positive schools in the United States.
7. We exceeded the requirements of the concept design by including much needed spaces such as a main lobby area, an office for the attendance clerk, reconfiguring classrooms to include natural light by way of outside windows, and a number of other essential spaces that were previously not listed.

Following our meeting this week, it was our understanding you would be taking the information from our meeting back to the board and there were no requirements we had not satisfied. Since that time, no additional documentation has been requested of us. In closing,

we have the best local contractors exclusively on our team with 70% of the contract money projected to remain in Horry County. Therefore, we respectfully request an opportunity to meet with you to further discuss this matter.

With kindest personal regards, I remain

Yours very truly,



---

Robbie Ferris  
President and CEO

cc: Dr. Rick Maxey *(via email only)*  
John Gardner *(via email only)*  
Joe DeFeo *(via email only)*  
David Cox *(via email only)*  
Aaron K. Thomas *(via email only)*  
Kenneth L. Childs, Esq. *(via email only)*  
Keith R. Powell, Esq. *(via email only)*

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:00 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices  
**Attachments:** A312PaymentBond-2010 - Working Draft - 001.docx; A312PerformanceBond-2010 - Working Draft - (3).docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

I'm going to attach the uncompleted forms of bonds to the Ex B for tonight.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Sunday, November 22, 2015 6:23 PM  
**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

---

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**  
Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666

rgreen@firstfloor.biz



# DRAFT AIA Document A312™ - 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

« »  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

«Horry County School District, South Carolina-», Political Subdivision of the State of South Carolina-»

« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County School District»

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:

« »

None

« »

See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »  
« »  
« »

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

« »  
« »  
« »  
« »  
« »  
« »

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- 1 the name of the Claimant;
- 2 the name of the person for whom the labor was done, or materials or equipment furnished;
- 3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- 4 a brief description of the labor, materials or equipment furnished;
- 5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- 6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- 7 the total amount of previous payments received by the Claimant; and
- 8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »

# DRAFT AIA Document A312™ - 2010

## Performance Bond

### CONTRACTOR:

(Name, legal status and address)

« »  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

Horry County Schools District, a political subdivision of the State of South Carolina. « »

« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County Schools District»

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:

« »

None

«X»

See Section 16

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

« »  
« »  
« »

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

« »  
« »  
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« »

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond ~~may must~~ be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located ~~and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.~~

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

16.1 « Performance of the Construction Contract includes post-occupancy obligations of the Contractor incorporated into the Construction Contract.

16.2 Performance of the Construction Contract includes performance of the responsibilities of the design professionals participating in the Design-Build Construction Contract. »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »



**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:16 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Hang on I need to get the current payment bond

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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---

**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Sunday, November 22, 2015 6:23 PM  
**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

---

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**  
Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666  
[rgreen@firstfloor.biz](mailto:rgreen@firstfloor.biz)

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:17 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Crap. I mean performance bond form.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:16 AM  
**To:** 'Robbie Ferris'  
**Subject:** RE: HCS - Revised Invoices

Hang on I need to get the current payment bond

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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---

**From:** Robbie Ferris [mailto:RFerris@sfla.biz]  
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**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**

Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666  
[rgreen@firstfloor.biz](mailto:rgreen@firstfloor.biz)

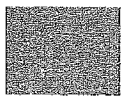
## **Sheri L. Wainscott**

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**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:18 AM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** 312 performance  
**Attachments:** 651979.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category



**AIA<sup>®</sup>**

# Document A312™ – 2010

## Performance Bond

**CONTRACTOR:**

*(Name, legal status and address)*

[Redacted Contractor Name and Address]

**SURETY:**

*(Name, legal status and principal place of business)*

[Redacted Surety Name and Address]

**OWNER:**

*(Name, legal status and address)*

Horry County Schools, a political subdivision of the State of South Carolina.

**CONSTRUCTION CONTRACT**

Date:

Amount: \$

Description:

*(Name and location)*

Horry County Schools

**BOND**

Date:

*(Not earlier than Construction Contract Date)*

Amount: \$

Modifications to this Bond:

☐

None

☒

See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

**SURETY**

Company: *(Corporate Seal)*

Signature:

Name and

Title:

*(Any additional signatures appear on the last page of this Performance Bond.)*

[Redacted Contractor Signature]

Signature:

Name and

Title:

[Redacted Surety Signature]

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**

[Redacted Agent or Broker Information]

**OWNER'S REPRESENTATIVE:**

*(Architect, Engineer or other party:)*

[Redacted Owner's Representative Information]

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond ~~may~~ must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. located.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

16.1 Performance of the Construction Contract includes post-occupancy obligations of the Contractor incorporated into the Construction Contract.

16.2 Performance of the Construction Contract includes performance of the responsibilities of the design professionals participating in the Design-Build Construction Contract.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

CONTRACTOR AS PRINCIPAL

Company:

*(Corporate Seal)*

SURETY

Company:

*(Corporate Seal)*

Signature:

Name and Title:

Address:

Signature:

Name and Title:

Address:



**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:19 AM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** A312PaymentBond-2010 - Working Draft - 001.docx.docx (Attachment)  
**Attachments:** A312PaymentBond-2010 - Working Draft - 001.docx.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

A312PaymentBond-2010 - Working Draft - 001.docx.docx (Attachment) EM KRP to Davis, Heinz, Ferris, Wawrzyniak, Peeples, Gardner, Wolfe (payment bond - draft)  
RE: Payment Bond request - Horry County Schools Projects  
From: Keith R. Powell  
To: Danielle Davis; [ahainz@horrycountyschools.net](mailto:ahainz@horrycountyschools.net)

# DRAFT AIA Document A312™ - 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE  
LLC, « »  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

«Horry County School District, South Carolina  
«Political Subdivision of the State of South Carolina»  
«335 Four Mile Rd., Conway, SC 29528  
843.488.6700 »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County School District» [one for each]  
« »

### BOND

Date:

(Not earlier than Construction Contract Date)

«November 19, 2015 »

Amount: \$ « »

Modifications to this Bond:



None



See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »  
« »  
« »

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Executive Director of Facilities

«Horry County Schools

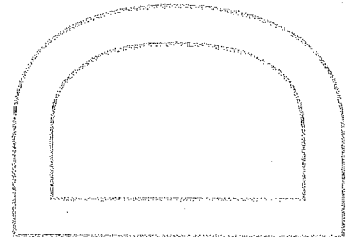
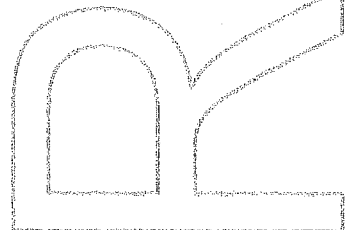
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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

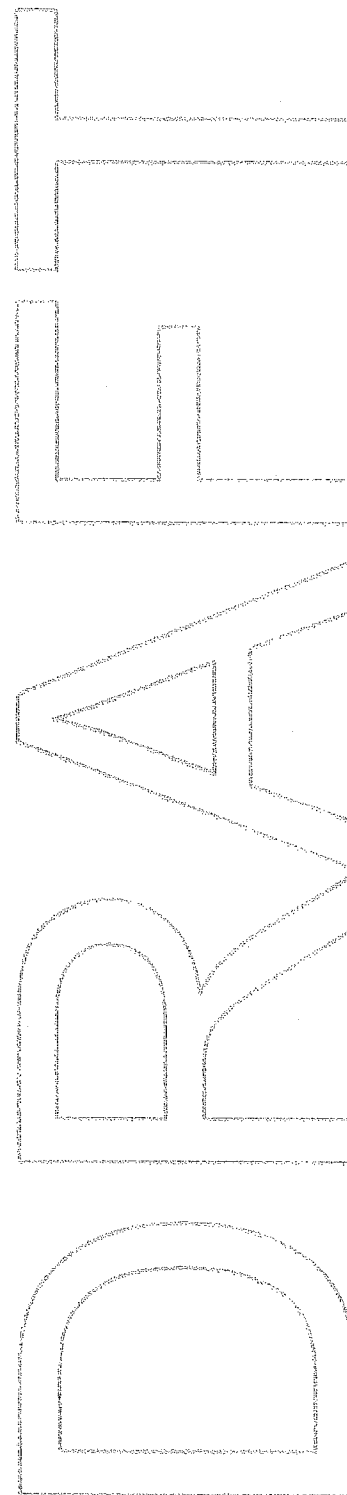
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Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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« »



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »As used in § 16.2, the phrase "to furnish labor, materials or equipment for use in the performance of the Construction Contract" includes the entire scope of the term "improve" as defined in S.C. Code § 26-6-10(2), which term "means and includes any design or other professional or skilled services furnished by architects, engineers, land surveyors, and landscape architects."

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »

## Sheri L. Wainscott

---

**From:** Nancy Zabrud <NZabrud@sfla.biz>  
**Sent:** Tuesday, November 24, 2015 12:09 PM  
**To:** Keith R. Powell  
**Subject:** Executed Horry County Contracts A141, Exhibit A and Exhibit B

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Keith,

When you have a moment, could you please forward the executed copy of the entire contract with Exhibit A and B. This will allow me to continue with the A143 and C441 to ensure I have all the final language.

Thanks so much.



Nancy Zabrud, CPA CGMA MBA  
Controller  
Capital Bank Plaza  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Main: 919-573-6350  
Cell: 919-818-2879  
Fax: 919-573-6355  
[nzabrud@sfla.biz](mailto:nzabrud@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

---

**From:** Robbie Ferris  
**Sent:** Tuesday, November 17, 2015 9:56 AM  
**To:** Nancy Zabrud; Mike Wawrzyniak; Kenneth J. Peeples; Aaron Thomas; Mike Richter  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe  
<[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz ([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))"  
<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner <[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>,  
Kenneth Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>, "[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)"

<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>

Cc: "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>

Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell

Childs & Halligan, P.A.

Columbia, South Carolina

[www.childs-halligan.com](http://www.childs-halligan.com)

(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone



**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:00 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices  
**Attachments:** A312PaymentBond-2010 - Working Draft - 001.docx; A312PerformanceBond-2010 - Working Draft - (3).docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

I'm going to attach the uncompleted forms of bonds to the Ex B for tonight.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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---

**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Sunday, November 22, 2015 6:23 PM  
**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,  
These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

---

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**  
Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666

rgreen@firstfloor.biz

# DRAFT AIA Document A312™ - 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

« »  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

«Horry County School District, South Carolina» «Political Subdivision of the State of South Carolina»

« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County School District»

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:

« »

None

« »

See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

« »  
« »  
« »

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

« »  
« »  
« »  
« »  
« »  
« »  
« »

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

ELECTRONIC COPYING of any portion of this AIA Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »

# DRAFT AIA Document A312™ - 2010

## Performance Bond

### CONTRACTOR:

(Name, legal status and address)

« »  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

Horry County Schools District, a political subdivision of the State of South Carolina. « »

« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

Horry County Schools District

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:

« »

None

« X »

See Section 16

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »  
« »  
« »

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

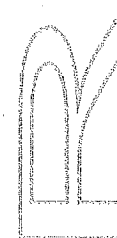
« »  
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« »

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



ELECTRONIC COPYING of any portion of this AIA Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.



§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may ~~must~~ be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located ~~and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.~~

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

16.1 « Performance of the Construction Contract includes post-occupancy obligations of the Contractor incorporated into the Construction Contract.

16.2 Performance of the Construction Contract includes performance of the responsibilities of the design professionals participating in the Design-Build Construction Contract. »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:17 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Crap. I mean performance bond form.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:16 AM  
**To:** 'Robbie Ferris'  
**Subject:** RE: HCS - Revised Invoices

Hang on I need to get the current payment bond

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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---

**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Sunday, November 22, 2015 6:23 PM  
**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**

Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666  
[rgreen@firstfloor.biz](mailto:rgreen@firstfloor.biz)

## **Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:18 AM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** 312 performance  
**Attachments:** 651979.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category



# Document A312™ – 2010

## Performance Bond

**CONTRACTOR:**

(Name, legal status and address)

**SURETY:**

(Name, legal status and principal place of business)

**OWNER:**

(Name, legal status and address)

Horry County Schools, a political subdivision of the State of South Carolina.

**CONSTRUCTION CONTRACT**

Date:

Amount: \$

Description:

(Name and location)

Horry County Schools

**BOND**

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond:

☐

None

☒

See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

**SURETY**

Company: (Corporate Seal)

Signature:

Name and

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Name and

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond ~~may~~ must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. located.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.



§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

16.1 Performance of the Construction Contract includes post-occupancy obligations of the Contractor incorporated into the Construction Contract.

16.2 Performance of the Construction Contract includes performance of the responsibilities of the design professionals participating in the Design-Build Construction Contract.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

Signature:

Name and Title:

Address:

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:19 AM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** A312PaymentBond-2010 - Working Draft - 001.docx.docx (Attachment)  
**Attachments:** A312PaymentBond-2010 - Working Draft - 001.docx.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

A312PaymentBond-2010 - Working Draft - 001.docx.docx (Attachment) EM KRP to Davis, Heinz, Ferris, Wawrzyniak, Peeples, Gardner, Wolfe (payment bond - draft)  
RE: Payment Bond request - Horry County Schools Projects  
From: Keith R. Powell  
To: Danielle Davis; [ahainz@horrycountyschools.net](mailto:ahainz@horrycountyschools.net)

# DRAFT AIA Document A312™ - 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE  
LLC, « »  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

«Horry County School District, South Carolina  
«Political Subdivision of the State of South Carolina»  
«335 Four Mile Rd., Conway, SC 29528  
843.488.6700 »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County School District» [one for each]  
« »

### BOND

Date:

(Not earlier than Construction Contract Date)

«November 19, 2015 »

Amount: \$ « »

Modifications to this Bond:



None



See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »  
« »  
« »

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Executive Director of Facilities

«Horry County Schools

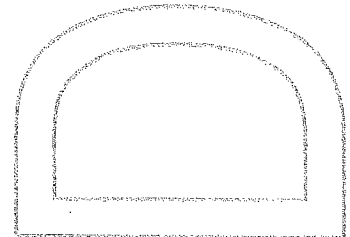
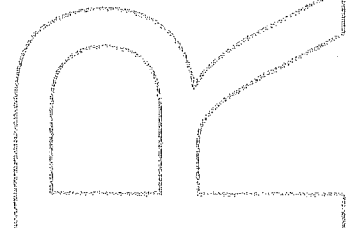
»  
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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

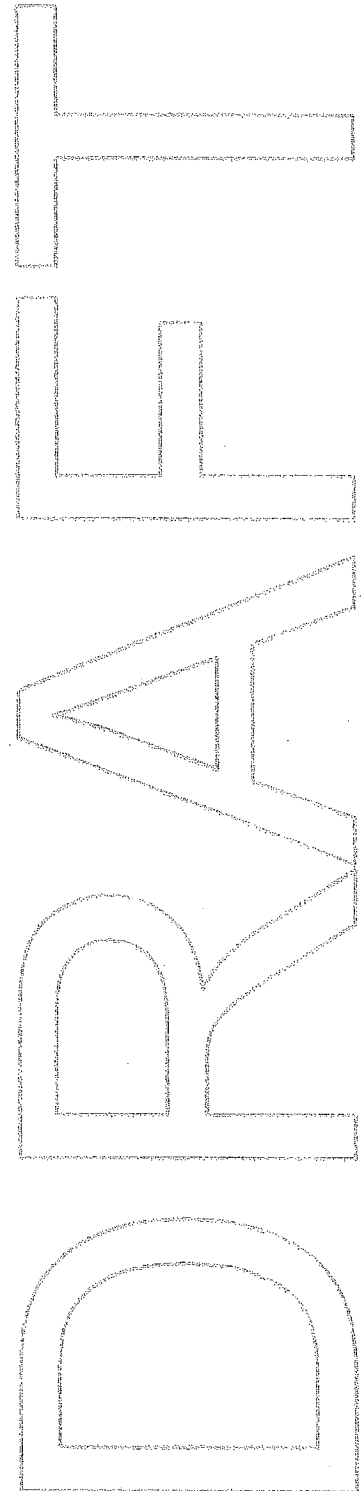
This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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« »



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »As used in § 16.2, the phrase "to furnish labor, materials or equipment for use in the performance of the Construction Contract" includes the entire scope of the term "improve" as defined in S.C. Code § 26-6-10(2), which term "means and includes any design or other professional or skilled services furnished by architects, engineers, land surveyors, and landscape architects."

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »

## Sheri L. Wainscott

---

**From:** Nancy Zabrud <NZabrud@sfla.biz>  
**Sent:** Tuesday, November 24, 2015 12:09 PM  
**To:** Keith R. Powell  
**Subject:** Executed Horry County Contracts A141, Exhibit A and Exhibit B

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Keith,

When you have a moment, could you please forward the executed copy of the entire contract with Exhibit A and B. This will allow me to continue with the A143 and C441 to ensure I have all the final language.

Thanks so much.



Nancy Zabrud, CPA CGMA MBA  
Controller  
Capital Bank Plaza  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Main: 919-573-6350  
Cell: 919-818-2879  
Fax: 919-573-6355  
[nzabrud@sfla.biz](mailto:nzabrud@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

---

**From:** Robbie Ferris  
**Sent:** Tuesday, November 17, 2015 9:56 AM  
**To:** Nancy Zabrud; Mike Wawrzyniak; Kenneth J. Peebles; Aaron Thomas; Mike Richter  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe  
<[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz ([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))"  
<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner <[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>,  
Kenneth Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>, "[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)"



<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>

Cc: "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>

Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell

Childs & Halligan, P.A.

Columbia, South Carolina

[www.childs-halligan.com](http://www.childs-halligan.com)

(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Wednesday, November 25, 2015 12:11 PM  
**To:** 'Nancy Zabloud'  
**Subject:** RE: Executed Horry County Contracts A141, Exhibit A and Exhibit B  
**Attachments:** SES Ex A - Final - (1).pdf; SES ex B - Final - (1).pdf; SMS ex B - Final - (1).pdf; SJIS ex B - Final - (1).pdf; MBM ex B - Final - (1).pdf; SJIS ex A - Final - (1).pdf; SMS ex A - Final - (1).pdf; MBM Ex A - Final - (1).pdf; SMS 141 - Final - (1).pdf; SJIS 141 - Final - (1).pdf; SES 141 - Final - (1).pdf; MBMS 141 - Final - (1).pdf; 673449 EX A - Final - (1).pdf; a141 ffep - Final - (1).pdf; EX B v2 - Final - (1)(1).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This should be all of it (3 per project). The only one possibly off is CFMS exhibits, because on my remote connection today I can't check them. All the rest I know are right, so you can rely on the same language for CFMS. These are as printed and checked by Sam & Robbie on Monday.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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---

**From:** Nancy Zabloud [<mailto:NZablud@sfla.biz>]  
**Sent:** Tuesday, November 24, 2015 12:09 PM  
**To:** Keith R. Powell  
**Subject:** Executed Horry County Contracts A141, Exhibit A and Exhibit B

Hi Keith,

When you have a moment, could you please forward the executed copy of the entire contract with Exhibit A and B. This will allow me to continue with the A143 and C441 to ensure I have all the final language.

Thanks so much.



Nancy Zabloud, CPA CGMA MBA  
Controller  
Capital Bank Plaza

333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Main: 919-573-6350  
Cell: 919-818-2879  
Fax: 919-573-6355  
[nzablud@sfla.biz](mailto:nzablud@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

**From:** Robbie Ferris  
**Sent:** Tuesday, November 17, 2015 9:56 AM  
**To:** Nancy Zablud; Mike Wawrzyniak; Kenneth J. Peebles; Aaron Thomas; Mike Richter  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe  
<[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz ([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))"  
<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner <[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>,  
Kenneth Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>, "[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)"  
<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>  
**Cc:** "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

**AIA®****Document A141™ – 2014 Exhibit A****Design-Build Amendment**

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")  
(In words, indicate day, month and year.)

for the following PROJECT:  
(Name and location or address)

New Socastee Elementary School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

THE OWNER:  
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29526

THE DESIGN-BUILDER:  
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

The Owner and Design-Builder hereby amend the Agreement as follows.

**TABLE OF ARTICLES**

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

**ARTICLE A.1 CONTRACT SUM**

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

☒ Stipulated Sum, in accordance with Section A.1.2  
(Paragraphs deleted)

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

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1

below

**§ A.1.2 Stipulated Sum**

**§ A.1.2.1** The Stipulated Sum shall be thirty-seven million nine hundred fifty-three thousand nine hundred ninety-one dollars (\$ 37,953,991.00), subject to authorized adjustments as provided in the Design-Build Documents.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

**§ A.1.5 Payments**

**§ A.1.5.1 Progress Payments**

**§ A.1.5.1.1** Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

**§ A.1.5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ A.1.5.1.3** An itemized payment request shall be submitted to the District by the 25<sup>th</sup> day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. Payment by the District of undisputed amounts shall be made by the 15<sup>th</sup> day of the following month if request is received by Contractor by the 25<sup>th</sup> of the month. If payment request is not received by the 25<sup>th</sup>, the payment will be made within thirty (30) days from the date the District receives the payment request

*(Paragraph deleted)*

**§ A.1.5.1.5** With each Application for Payment the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

**§ A.1.5.1.6** In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ A.1.5.1.7** Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

Init.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half percent ( 3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent ( 3.5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

(Paragraphs deleted)

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements which extend beyond final payment.

(Paragraph deleted)

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work as follows:

May 1, 2017.

(Table deleted)

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Liquidated damages per A141-2014.

Init.

#### ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.:

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraph deleted)*

§ A.3.1.5 Allowances and Contingencies:

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

##### .1 Allowances

Owner Furniture Allowance	\$ 1,000,000
Owner Hardware Allowance	\$ 250,000
Owner Controls Allowance	\$ 500,000
Owner Fire Alarm Allowance	\$ 600,000
Owner Playground Equipment Allowance	\$ 350,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 00,000
Owner Technology Allowance	\$ 1,275,000
Owner Landscaping Allowance	\$ 200,000

##### .2 Contingencies

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015. The Design-Builder's Proposal clarifies the Design-Builder's assumptions and clarifications. The Horry County Board of Education accepts the Proposal as an acceptable interpretation of the Design Requirements.

*(Paragraphs deleted)*

#### ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

Socastee ES:

Superintendent: Dale McCoy

*(Paragraph deleted)*

Project Manager: Mike Dickman

*(Paragraphs deleted)*

Assistant Superintendent: David Isham

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

*(List name, discipline, address and other information.)*

SFL+a Architects: Architect, Raleigh NC

Metcon/TA Loving joint venture: General Contractor, Pembroke NC

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## ARTICLE A.5 COST OF THE WORK

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

### § A.5.4 Other Agreements

*(Paragraph deleted)*

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

### § A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### § A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER *(Signature)*

Joe Defeo, Chairman of the Board of Education  
*(Printed name and title)*

\_\_\_\_\_  
DESIGN-BUILDER *(Signature)*

Robert Ferris, Authorized Member  
*(Printed name and title)*

Init.

## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:51:25 on 11/23/2015.

### PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")

...

New Socastee Elementary School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,  
335 Four Mile Rd.  
Conway, SC 29526

...

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

[ X ] Stipulated Sum, in accordance with Section A.1.2 below

[ ~~—~~ ] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[ ~~—~~ ] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

### PAGE 2

§ A.1.2.1 The Stipulated Sum shall be (\$ ~~—~~ ), thirty-seven million nine hundred fifty-three thousand nine hundred ninety-one dollars (\$ 37,953,991.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)*

~~§ A.1.2.3 Unit prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
<del>§ A.1.3 Cost of the Work Plus Design Builder's Fee</del>		
<del>§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.</del>		
<del>§ A.1.3.2 The Design Builder's Fee:</del>		
<del>(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)</del>		

~~§ A.1.4 Cost of the Work Plus Design Builder's Fee With a Guaranteed Maximum Price~~

~~§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.4.2 The Design Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee and the method for adjustment to the Fee for changes in the Work.)~~

~~§ A.1.4.3 Guaranteed Maximum Price~~

~~§ A.1.4.3.1 The sum of the Cost of the Work and the Design Builder's Fee is guaranteed by the Design Builder not to exceed (\$ —), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design Builder without reimbursement by the Owner.~~

~~(Insert specific provisions if the Design Builder is to participate in any savings.)~~

~~§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price~~

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design Builder's Fee, and other items that comprise the Guaranteed Maximum Price.~~

~~(Provide information below or reference an attachment.)~~

~~§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.4.3.4 Unit Prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

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User Notes:

(728068658)

...

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

month.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the      day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the      day of the      month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than      (      ) days after the Owner receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)* An itemized payment request shall be submitted to the District by the 25<sup>th</sup> day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. Payment by the District of undisputed amounts shall be made by the 15<sup>th</sup> day of the following month if request is received by Contractor by the 25<sup>th</sup> of the month. If payment request is not received by the 25<sup>th</sup>, the payment will be made within thirty (30) days from the date the District receives the payment request

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

PAGE 3

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half percent ( 3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent ( 3.5 %);

...

~~§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:~~

~~(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)~~

~~§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee~~

~~§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builders through the end of the period covered by the Application for Payment and for which Design-Builders has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 — Take the Cost of the Work as described in Article A.5 of this Amendment;~~
- ~~.2 — Add the Design-Builders' Fee, less retainage of — percent ( — %). The Design-Builders' Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builders' Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 — Subtract retainage of — percent ( — %) from that portion of the Work that the Design-Builders self-performs;~~
- ~~.4 — Subtract the aggregate of previous payments made by the Owner;~~
- ~~.5 — Subtract the shortfall, if any, indicated by the Design-Builders in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 — Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

~~§ A.1.5.3.3 The Owner and Design-Builders shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builders shall execute agreements in accordance with those terms.~~

~~§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price~~

~~§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builders on account of that portion of the Work for which the Design-Builders has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 — Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Design-Builder's Fee, less retainage of — percent (—%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract retainage of — percent (—%) from that portion of the Work that the Design-Builder self-performs;
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
7. Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, requirements which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

...

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than — (—) days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

May 1, 2017.

Portion of Work

Substantial Completion Date

...

Liquidated damages per A141-2014.

PAGE 4

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following: Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.:

~~§ A.3.1.1 The Supplementary and other Conditions of the Contract:~~

Document	Title	Date	Pages
----------	-------	------	-------

~~§ A.3.1.2 The Specifications:~~

~~(Either list the specifications here or refer to an exhibit attached to this Amendment.)~~

Section	Title	Date	Pages
---------	-------	------	-------

~~§ A.3.1.3 The Drawings:~~

~~(Either list the drawings here or refer to an exhibit attached to this Amendment.)~~

Number	Title	Date
--------	-------	------

~~§ A.3.1.4 The Sustainability Plan, if any:~~

~~(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)~~

Title	Date	Pages
-------	------	-------

Other identifying information:

...

Owner Furniture Allowance	\$ 1,000,000
Owner Hardware Allowance	\$ 250,000
Owner Controls Allowance	\$ 500,000
Owner Fire Alarm Allowance	\$ 600,000
Owner Playground Equipment Allowance	\$ 350,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 00,000
Owner Technology Allowance	\$ 1,275,000
Owner Landscaping Allowance	\$ 200,000

...

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

...

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015. The Design-Builder's Proposal clarifies the Design-Builder's assumptions and clarifications. The Horry County Board of Education accepts the Proposal as an acceptable interpretation of the Design Requirements.

~~§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:~~

~~§ A.3.1.8 To the extent the Design Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:~~

...

~~.1—Superintendent Socastee ES:~~  
~~Superintendent: Dale McCoy~~

~~.2—Project Manager~~~~Project Manager: Mike Dickman~~

~~.3—Others~~

~~Assistant Superintendent: David Isham~~

...

~~Sfl+a Architects; Architect, Raleigh NC~~  
~~Metcon/TA Loving joint venture: General Contractor, Pembroke NC~~

PAGE 5

~~§ A.5.1 Cost To Be Reimbursed as Part of the Contract~~

~~§ A.5.1.1 Labor Costs~~

~~§ A.5.1.1.1 Wages of construction workers directly employed by the Design Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~

~~§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design Builder's supervisory and administrative personnel when stationed at the site.~~

~~(If it is intended that the wages or salaries of certain personnel stationed at the Design Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------



~~§ A.5.1.1.3 Wages and salaries of the Design Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ A.5.1.1.4 Costs paid or incurred by the Design Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.~~

~~§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.~~

~~§ A.5.1.2 Contract Costs. Payments made by the Design Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.~~

~~§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction~~

~~§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.~~

~~§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.~~

~~§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items~~

~~§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design Builder shall mean fair market value.~~

~~§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design Builder owned item may not exceed the purchase price of any comparable item. Rates of Design Builder owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~

~~§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.~~

~~§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.~~

~~§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.~~

~~§ A.5.1.5 Miscellaneous Costs~~

~~§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self insurance for either full or partial amounts of the coverages required by the Design-Build Documents.~~

~~§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design Builder is liable.~~

~~§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.~~

~~§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.~~

~~§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.~~

~~§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.~~

~~§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.~~

~~§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.~~

~~§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.~~

~~§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

#### ~~§ A.5.1.6 Other Costs and Emergencies~~

~~§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.~~

~~§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.~~

~~§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.~~

#### ~~§ A.5.1.7 Related Party Transactions~~

~~§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.~~

~~§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall~~

be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

~~§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract~~

~~The Cost of the Work shall not include the items listed below:~~

- ~~.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;~~
- ~~.2 Expenses of the Design-Builder's principal office and offices other than the site office;~~
- ~~.3 Overhead and general expenses, except as may be expressly included in Section A.5.1;~~
- ~~.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;~~
- ~~.5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~
- ~~.6 Any cost not specifically and expressly described in Section A.5.1; and~~
- ~~.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.~~

~~§ A.5.3 Discounts, Rebates, and Refunds~~

~~§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.~~

~~§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.~~

~~§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~

~~§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below: Documents.~~

...

Joe Defeo, Chairman of the Board of Education

Robert Ferris, Authorized Member

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:51:25 on 11/23/2015 under Order No. 0239586208\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)



# AIA®

## Document A141™ – 2014 Exhibit B

### Insurance and Bonds

for the following PROJECT:

*(Name and location or address)*

New Socastee Elementary School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

THE OWNER:

*(Name, legal status and address)*

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

THE DESIGN-BUILDER:

*(Name, legal status and address)*

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

#### THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

*(In words, indicate day, month and year.)*

#### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

#### ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

(911158130)

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the  
(Paragraphs deleted)  
Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

(Paragraphs deleted)

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1.

Init.

The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

**§ B.2.2 Performance Bond and Payment Bond**

The Design-Builder shall provide surety bonds as follows:  
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**ARTICLE B.3 OWNER'S INSURANCE**

**§ B.3.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**§ B.3.2 Property Insurance**

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

(Paragraph deleted)

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

(Paragraph deleted)

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

(Paragraphs deleted)

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

Init.

cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

*(Paragraph deleted)*

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

*(Paragraphs deleted)*

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## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:13:51 on 11/23/2015.

### PAGE 1

New Socastee Elementary School

(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

...

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

### PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, ~~unless a different duration is stated below:~~

~~(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)~~

#### Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

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User Notes:

(911158130)

...

- 3 damages because of injury to or destruction of tangible property; property, and must contain the subcontractor exception to the "your work" exclusion;

...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$ ) per claim and (\$ ) in the aggregate.~~

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability and Pollution and Automobile Liability~~. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability, and Pollution and Automobile Liability~~. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

PAGE 3

A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's 100% of contract value.

professional liability insurance.

...

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

~~§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.~~

~~§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds. insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

~~§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.~~

§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including

consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

~~§ B.3.2.5~~ If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

~~§ B.3.2.7~~ **Waivers of Subrogation.** The Owner and Design Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

#### PAGE 4

~~§ B.3.2.10~~ The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design Builder as the method of binding dispute resolution in the Agreement. ~~If the Owner and Design Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

#### ~~ARTICLE B.4 SPECIAL TERMS AND CONDITIONS~~

~~Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:~~



**AIA®**

# Document A141™ – 2014 Exhibit B

## Insurance and Bonds

for the following PROJECT:

*(Name and location or address)*

New Socastee Middle School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

### THE OWNER:

*(Name, legal status and address)*

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

### THE DESIGN-BUILDER:

*(Name, legal status and address)*

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

### THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

*(In words, indicate day, month and year.)*

### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

#### ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

(1902851185)

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the *(Paragraphs deleted)* Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

*(Paragraphs deleted)*

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 **Additional Insured Obligations.** The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1.

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The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

#### § B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:  
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### ARTICLE B.3 OWNER'S INSURANCE

#### § B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

(Paragraph deleted)

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

(Paragraph deleted)

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

(Paragraphs deleted)

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

Init.

cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

*(Paragraph deleted)*

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

*(Paragraphs deleted)*

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## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:13:38 on 11/23/2015.

PAGE 1

New Socastee Middle School

(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,

333 Fayetteville St., Suite 225

Raleigh, NC 27601

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

...

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2.

PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, ~~unless a different duration is stated below:~~

~~(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)~~

Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

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User Notes:

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...

- .3 damages because of injury to or destruction of tangible property; property, and must contain the subcontractor exception to the "your work" exclusion;

...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$ ) per claim and (\$ ) in the aggregate.~~

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability and Pollution and Automobile Liability~~. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability, and Pollution and Automobile Liability~~. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

PAGE 3

A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's

100% of contract value.

professional liability insurance.

...  
§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds. insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including

consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

~~§ B.3.2.5~~ If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

~~§ B.3.2.7~~ **Waivers of Subrogation.** The Owner and Design Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

PAGE 4

~~§ B.3.2.10~~ The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design Builder as the method of binding dispute resolution in the Agreement. ~~If the Owner and Design Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

#### ~~ARTICLE B.4 SPECIAL TERMS AND CONDITIONS~~

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



**AIA®**

# Document A141™ – 2014 Exhibit B

## Insurance and Bonds

for the following PROJECT:

*(Name and location or address)*

New St. James Intermediate School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

### THE OWNER:

*(Name, legal status and address)*

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

### THE DESIGN-BUILDER:

*(Name, legal status and address)*

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

### THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

*(In words, indicate day, month and year.)*

### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

### ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

### ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

(1228161900)

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the  
(Paragraphs deleted)  
Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

(Paragraphs deleted)

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1.

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The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

#### § B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:  
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### ARTICLE B.3 OWNER'S INSURANCE

#### § B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

(Paragraph deleted)

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

(Paragraph deleted)

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

(Paragraphs deleted)

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

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cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

*(Paragraph deleted)*

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

*(Paragraphs deleted)*

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## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:13:18 on 11/23/2015.

### PAGE 1

New St. James Intermediate School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

...

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

### PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, ~~unless a different duration is stated below:~~

~~(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)~~

#### Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

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User Notes:

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- ...  
3 damages because of injury to or destruction of tangible property; property, and must contain the subcontractor exception to the "your work" exclusion;  
...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...  
\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ B.2.1.7.1 The Design Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$ ) per claim and (\$ ) in the aggregate.~~

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability and Pollution and Automobile Liability~~. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability, and Pollution and Automobile Liability~~. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

PAGE 3

A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's 100% of contract value.

professional liability insurance.

...

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

~~§ B.3.2.1.4 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.~~

~~§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit;~~

§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds. insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

~~§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.~~

§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including

consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

~~§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ B.3.2.7 Waivers of Subrogation. The Owner and Design Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

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~~§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

#### ~~ARTICLE B.4 SPECIAL TERMS AND CONDITIONS~~

~~Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:~~



# AIA®

## Document A141™ – 2014 Exhibit B

### Insurance and Bonds

for the following PROJECT:

*(Name and location or address)*

New Myrtle Beach Middle School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

#### THE OWNER:

*(Name, legal status and address)*

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29528

#### THE DESIGN-BUILDER:

*(Name, legal status and address)*

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

#### THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

*(In words, indicate day, month and year.)*

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#### ARTICLE B.1 GENERAL

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#### ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

#### ADDITIONS AND DELETIONS:

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User Notes:

(729313891)

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the *(Paragraphs deleted)* Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

*(Paragraphs deleted)*

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1.

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The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

#### § B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### ARTICLE B.3 OWNER'S INSURANCE

#### § B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

*(Paragraph deleted)*

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

*(Paragraph deleted)*

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

*(Paragraphs deleted)*

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the

Init.

cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

*(Paragraph deleted)*

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

*(Paragraphs deleted)*

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## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:13:01 on 11/23/2015.

### PAGE 1

New Myrtle Beach Middle School

(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,  
335 Four Mile Rd.  
Conway, SC 29528

...

FIRSTFLOOR ENERGY POSITIVE LLC,

333 Fayetteville St., Suite 225

Raleigh, NC 27601

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the twenty-third day of November in the year two thousand fifteen (2015).

...

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1 and/or B.3.2..

### PAGE 2

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

*(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

#### Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than two million (\$ 2,000,000 ) for each occurrence and five million (\$ 5,000,000.00 ) in the aggregate providing coverage for claims including

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User Notes:

(729313891)

...

- .3 damages because of injury to or destruction of tangible ~~property~~; property, and must contain the subcontractor exception to the "your work" exclusion;

...

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than one million (\$ 1,000,000 ) per claim and one million (\$ 1,000,000.00 ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

...

\$100,000 per accident.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000 ) per claim and two million (\$ 2,000,000 ) in the aggregate.

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$ ) per claim and (\$ ) in the aggregate.~~

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability and Pollution and Automobile Liability~~. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, ~~Automobile Liability, and Pollution and Automobile Liability~~. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

PAGE 3

A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's

100% of contract value.

professional liability insurance.

...

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds. insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including

consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

~~§ B.3.2.5~~ If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

~~§ B.3.2.7~~ **Waivers of Subrogation.** The Owner and Design Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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~~§ B.3.2.10~~ The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### ~~ARTICLE B.4 SPECIAL TERMS AND CONDITIONS~~

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:



# Document A141™ – 2014 Exhibit A

## Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")  
(In words, indicate day, month and year.)

for the following PROJECT:  
(Name and location or address)

New St. James Intermediate School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

THE OWNER:  
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29526

THE DESIGN-BUILDER:  
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

The Owner and Design-Builder hereby amend the Agreement as follows.

### TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

#### ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

☒ Stipulated Sum, in accordance with Section A.1.2

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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User Notes:

(1413696307)

(Paragraphs deleted)  
below

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be forty-seven million seven hundred forty-two thousand three hundred thirty-three dollars (\$ 47,742,333.00), subject to authorized adjustments as provided in the Design-Build Documents.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ A.1.5.1.3 An itemized payment request shall be submitted to the District by the 25<sup>th</sup> day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. Payment by the District of undisputed amounts shall be made by the 15<sup>th</sup> day of the following month if request is received by Contractor by the 25<sup>th</sup> of the month. If payment request is not received by the 25<sup>th</sup>, the payment will be made within thirty (30) days from the date the District receives the payment request

(Paragraph deleted)

§ A.1.5.1.5 With each Application for Payment the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half percent ( 3.5 % ) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent ( 3.5 % );
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

*(Paragraphs deleted)*

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements which extend beyond final payment.

*(Paragraph deleted)*

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work as follows:

May 1, 2017.

*(Table deleted)*

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

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Liquidated damages per A141-2014.

#### ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.:

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraph deleted)*

§ A.3.1.5 Allowances and Contingencies:

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

##### .1 Allowances

Owner Furniture Allowance	\$ 1,500,000
Owner Hardware Allowance	\$ 350,000
Owner Controls Allowance	\$ 650,000
Owner Fire Alarm Allowance	\$ 750,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 125,000
Owner Technology Allowance	\$ 1,865,000
Owner Landscaping Allowance	\$200,000
Owner Playground Equipment Allowance	\$150,000

##### .2 Contingencies

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015. The Design-Builder's Proposal clarifies the Design-Builder's assumptions and clarifications. The Horry County Board of Education accepts the Proposal as an acceptable interpretation of the Design Requirements.

*(Paragraphs deleted)*

#### ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

St. James Intermediate:  
Superintendent: Randall Jernigan  
Project Manager: Steve Bond

*(Paragraphs deleted)*

Assistant Superintendent: Rodney Nichols

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

*(List name, discipline, address and other information.)*

SfL+a Architects: Architect, Raleigh NC

Metcon/TA Loving joint venture: General Contractor, Pembroke NC

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User Notes: (1413696307)



## ARTICLE A.5 COST OF THE WORK

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

### § A.5.4 Other Agreements

*(Paragraph deleted)*

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

### § A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### § A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER *(Signature)*

Joe Defeo, Chairman of the Board of Education  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
DESIGN-BUILDER *(Signature)*

Robert Ferris, Authorized Member  
\_\_\_\_\_  
*(Printed name and title)*

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## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:12:44 on 11/23/2015.

### PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Build dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")

...

New St. James Intermediate School per Owner's Request for Proposals No. 1415-91 and the Design-Build's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,  
335 Four Mile Rd.  
Conway, SC 29526

...

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

[ ☒ ] Stipulated Sum, in accordance with Section A.1.2 below

[ ☐ ] Cost of the Work plus the Design-Build's Fee, in accordance with Section A.1.3 below

[ ☐ ] Cost of the Work plus the Design-Build's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

### PAGE 2

§ A.1.2.1 The Stipulated Sum shall be (\$ —), forty-seven million seven hundred forty-two thousand three hundred thirty-three dollars (\$ 47,742,333.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)*

~~§ A.1.2.3 Unit prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
<del>§ A.1.3 Cost of the Work Plus Design-Builder's Fee</del>		
<del>§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.</del>		
<del>§ A.1.3.2 The Design-Builder's Fee:</del>		
<del>(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)</del>		

~~§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price~~

~~§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.4.2 The Design-Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)~~

~~§ A.1.4.3 Guaranteed Maximum Price~~

~~§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$ ), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.~~

~~(Insert specific provisions if the Design-Builder is to participate in any savings.)~~

~~§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price~~

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.~~

~~(Provide information below or reference an attachment.)~~

~~§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.4.3.4 Unit Prices, if any:~~

~~(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
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~~§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

...

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

month.

§ A.1.5.1.3 ~~Provided that an Application for Payment is received not later than the — day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the — day of the — month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than — (—) days after the Owner receives the Application for Payment.~~  
~~(Federal, state or local laws may require payment within a certain period of time.)~~ An itemized payment request shall be submitted to the District by the 25<sup>th</sup> day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. Payment by the District of undisputed amounts shall be made by the 15<sup>th</sup> day of the following month if request is received by Contractor by the 25<sup>th</sup> of the month. If payment request is not received by the 25<sup>th</sup>, the payment will be made within thirty (30) days from the date the District receives the payment request

~~§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~

§ A.1.5.1.5 ~~With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.~~

PAGE 3

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half

- percent ( 3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent ( 3.5 %);

...

~~§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:~~

~~(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)~~

~~§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee~~

~~§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~1 Take the Cost of the Work as described in Article A.5 of this Amendment;~~
- ~~2 Add the Design-Builder's Fee, less retainage of — percent ( — %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~3 Subtract retainage of — percent ( — %) from that portion of the Work that the Design-Builder self-performs;~~
- ~~4 Subtract the aggregate of previous payments made by the Owner;~~
- ~~5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

~~§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.~~

~~§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price~~

~~§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Design-Builder's Fee, less retainage of        percent (       %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract retainage of        percent (       %) from that portion of the Work that the Design-Builder self-performs;
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
7. Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with these terms.

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, requirements which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

...

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than        (      ) days from the date of this Amendment, or as follows:  
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

May 1, 2017.

Portion of Work

Substantial Completion Date

PAGE 4

Liquidated damages per A141-2014.

...

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following: Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.;

~~§ A.3.1.1 The Supplementary and other Conditions of the Contract:~~

Document	Title	Date	Pages
----------	-------	------	-------

~~§ A.3.1.2 The Specifications:~~

~~(Either list the specifications here or refer to an exhibit attached to this Amendment.)~~

Section	Title	Date	Pages
---------	-------	------	-------

~~§ A.3.1.3 The Drawings:~~

~~(Either list the drawings here or refer to an exhibit attached to this Amendment.)~~

Number	Title	Date
--------	-------	------

~~§ A.3.1.4 The Sustainability Plan, if any:~~

~~(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)~~

Title	Date	Pages
-------	------	-------

Other identifying information:

...

Owner Furniture Allowance	\$ 1,500,000
Owner Hardware Allowance	\$ 350,000
Owner Controls Allowance	\$ 650,000
Owner Fire Alarm Allowance	\$ 750,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 125,000
Owner Technology Allowance	\$ 1,865,000
Owner Landscaping Allowance	\$200,000

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User Notes:

(1413696307)

Owner Playground Equipment Allowance \$150,000

...

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

...

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015. The Design-Builder's Proposal clarifies the Design-Builder's assumptions and clarifications. The Horry County Board of Education accepts the Proposal as an acceptable interpretation of the Design Requirements.

~~§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:~~

~~§ A.3.1.8 To the extent the Design Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:~~

...

~~.1 — Superintendent~~ St. James Intermediate:  
Superintendent: Randall Jernigan

~~.2 — Project Manager~~ Project Manager: Steve Bond

~~.3 — Others~~

Assistant Superintendent: Rodney Nichols

...

SFL+ Architects: Architect, Raleigh NC  
Metcon/TA Loving joint venture: General Contractor, Pembroke NC

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~~§ A.5.1 Cost To Be Reimbursed as Part of the Contract~~

~~§ A.5.1.1 Labor Costs~~

~~§ A.5.1.1.1 Wages of construction workers directly employed by the Design Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~

~~§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design Builder's supervisory and administrative personnel when stationed at the site.~~

~~(If it is intended that the wages or salaries of certain personnel stationed at the Design Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------



~~§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.~~

~~§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.~~

~~§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.~~

~~§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction~~

~~§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.~~

~~§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.~~

~~§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items~~

~~§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.~~

~~§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~

~~§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.~~

~~§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.~~

~~§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.~~

~~§ A.5.1.5 Miscellaneous Costs~~

~~§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self insurance for either full or partial amounts of the coverages required by the Design-Build Documents.~~

~~§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.~~

~~§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design Builder is required by the Design-Build Documents to pay.~~

~~§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.~~

~~§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.~~

~~§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.~~

~~§ A.5.1.5.7 Deposits lost for causes other than the Design Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.~~

~~§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design Builder, reasonably incurred by the Design Builder after the execution of the Agreement and in the performance of the Work.~~

~~§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design Builder's personnel required for the Work.~~

~~§ A.5.1.5.10 That portion of the reasonable expenses of the Design Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

#### ~~§ A.5.1.6 Other Costs and Emergencies~~

~~§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.~~

~~§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.~~

~~§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design Builder and only to the extent that the cost of repair or correction is not recovered by the Design Builder from insurance, sureties, Contractors, suppliers, or others.~~

#### ~~§ A.5.1.7 Related Party Transactions~~

~~§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design Builder; any entity in which any stockholder in, or management employee of, the Design Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design Builder. The term "related party" includes any member of the immediate family of any person identified above.~~

~~§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design Builder and a related party, the Design Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall~~

be included as a cost to be reimbursed, and the Design Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

~~§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract~~

~~The Cost of the Work shall not include the items listed below:~~

- ~~.1 Salaries and other compensation of the Design Builder's personnel stationed at the Design Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;~~
- ~~.2 Expenses of the Design Builder's principal office and offices other than the site office;~~
- ~~.3 Overhead and general expenses, except as may be expressly included in Section A.5.1;~~
- ~~.4 The Design Builder's capital expenses, including interest on the Design Builder's capital employed for the Work;~~
- ~~.5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~
- ~~.6 Any cost not specifically and expressly described in Section A.5.1; and~~
- ~~.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.~~

~~§ A.5.3 Discounts, Rebates, and Refunds~~

~~§ A.5.3.1 Cash discounts obtained on payments made by the Design Builder shall accrue to the Owner if (1) before making the payment, the Design Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design Builder with which to make payments; otherwise, cash discounts shall accrue to the Design Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design Builder shall make provisions so that they can be obtained.~~

~~§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.~~

~~§ A.5.4.1 When the Design Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.~~

~~§ A.5.4.2 Agreements between the Design Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design Builder in Section A.5.5, below: Documents.~~

...

Joe Defeo, Chairman of the Board of Education

Robert Ferris, Authorized Member

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:12:44 on 11/23/2015 under Order No. 0239586208\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)

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(1413696307)



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# Document A141™ – 2014 Exhibit A

## Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")  
(In words, indicate day, month and year.)

for the following PROJECT:  
(Name and location or address)

New Socastee Middle School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

THE OWNER:  
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29526

THE DESIGN-BUILDER:  
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

The Owner and Design-Builder hereby amend the Agreement as follows.

### TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

#### ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

☒ [ X ] Stipulated Sum, in accordance with Section A.1.2  
(Paragraphs deleted)

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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below

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be forty-two million four hundred eighty-eight thousand one hundred sixteen dollars (\$ 42,488,116.00), subject to authorized adjustments as provided in the Design-Build Documents.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ A.1.5.1.3 An itemized payment request shall be submitted to the District by the 25<sup>th</sup> day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. Payment by the District of undisputed amounts shall be made by the 15<sup>th</sup> day of the following month if request is received by Contractor by the 25<sup>th</sup> of the month. If payment request is not received by the 25<sup>th</sup>, the payment will be made within thirty (30) days from the date the District receives the payment request

*(Paragraph deleted)*

§ A.1.5.1.5 With each Application for Payment the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

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§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half percent ( 3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent ( 3.5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

(Paragraphs deleted)

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements which extend beyond final payment.

(Paragraph deleted)

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work as follows:

May 1, 2017.

(Table deleted)

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Liquidated damages per A141-2014.

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#### ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.:

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraph deleted)*

§ A.3.1.5 Allowances and Contingencies:

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

##### .1 Allowances

Owner Furniture Allowance	\$ 1,250,000
Owner Hardware Allowance	\$ 350,000
Owner Controls Allowance	\$ 650,000
Owner Fire Alarm Allowance	\$ 750,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 125,000
Owner Technology Allowance	\$ 1,645,000
Owner Landscaping Allowance	\$200,000
DB Complete Site Package Allowance	\$2,500,000

##### .2 Contingencies

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015. The Design-Builder's Proposal clarifies the Design-Builder's assumptions and clarifications. The Horry County Board of Education accepts the Proposal as an acceptable interpretation of the Design Requirements.

*(Paragraphs deleted)*

#### ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

Socastee Middle School:  
Superintendent: Phil Asslynn  
Project Manager: Mike Dickman

*(Paragraphs deleted)*

Assistant Superintendent: Bob Green

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

*(List name, discipline, address and other information.)*

SfL+a Architects: Architect, Raleigh NC

Metcon/TA Loving joint venture: General Contractor, Pembroke NC

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## ARTICLE A.5 COST OF THE WORK

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

### § A.5.4 Other Agreements

*(Paragraph deleted)*

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

### § A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### § A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER *(Signature)*

Joe Defeo, Chairman of the Board of Education  
*(Printed name and title)*

\_\_\_\_\_  
DESIGN-BUILDER *(Signature)*

Robert Ferris, Authorized Member  
*(Printed name and title)*

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## Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:12:29 on 11/23/2015.

### PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-BUILDER dated the twenty-third day of November in the year two thousand fifteen (the "Agreement")

...

New Socastee Middle School per Owner's Request for Proposals No. 1415-91 and the Design-BUILDER's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

...

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina.  
335 Four Mile Rd.  
Conway, SC 29526

...

FIRSTFLOOR ENERGY POSITIVE LLC.  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

...

[ X ] Stipulated Sum, in accordance with Section A.1.2 below

[ ~~—~~ ] Cost of the Work plus the Design-BUILDER's Fee, in accordance with Section A.1.3 below

[ ~~—~~ ] Cost of the Work plus the Design-BUILDER's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

### PAGE 2

§ A.1.2.1 The Stipulated Sum shall be (\$ ~~—~~), forty-two million four hundred eighty-eight thousand one hundred sixteen dollars (\$ 42,488,116.00), subject to authorized adjustments as provided in the Design-Build Documents.

§ ~~A.1.2.2~~ The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.2.3 Unit prices, if any:  
(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
<del>§ A.1.3 Cost of the Work Plus Design Builder's Fee</del>		
<del>§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.</del>		
<del>§ A.1.3.2 The Design Builder's Fee: (State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)</del>		

~~§ A.1.4 Cost of the Work Plus Design Builder's Fee With a Guaranteed Maximum Price~~

~~§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.4.2 The Design Builder's Fee:  
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee and the method for adjustment to the Fee for changes in the Work.)~~

~~§ A.1.4.3 Guaranteed Maximum Price~~

~~§ A.1.4.3.1 The sum of the Cost of the Work and the Design Builder's Fee is guaranteed by the Design Builder not to exceed (\$ ), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design Builder without reimbursement by the Owner.  
(Insert specific provisions if the Design Builder is to participate in any savings.)~~

~~§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price~~

~~Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design Builder's Fee, and other items that comprise the Guaranteed Maximum Price.  
(Provide information below or reference an attachment.)~~

~~§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:  
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)~~

~~§ A.1.4.3.4 Unit Prices, if any:  
(Identify item, state the unit price, and state any applicable quantity limitations.)~~

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

~~§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:~~

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...

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

month.

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the — day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the — day of the — month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than — (—) days after the Owner receives the Application for Payment.  
*(Federal, state or local laws may require payment within a certain period of time.)* An itemized payment request shall be submitted to the District by the 25<sup>th</sup> day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the Contract Agreement; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending. If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. — Payment by the District of undisputed amounts shall be made by the 15<sup>th</sup> day of the following month if request is received by Contractor by the 25<sup>th</sup> of the month. If payment request is not received by the 25<sup>th</sup>, the payment will be made within thirty (30) days from the date the District receives the payment request

~~§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of these payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. ~~Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.~~

PAGE 3

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of three and one-half percent ( 3.5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of three and one-half percent ( 3.5 %);

...  
~~§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:~~

~~(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)~~

~~§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee~~

~~§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builders through the end of the period covered by the Application for Payment and for which Design-Builders has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 Take the Cost of the Work as described in Article A.5 of this Amendment;~~
- ~~.2 Add the Design-Builders Fee, less retainage of — percent ( — %). The Design-Builders Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builders Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~.3 Subtract retainage of — percent ( — %) from that portion of the Work that the Design-Builders self-performs;~~
- ~~.4 Subtract the aggregate of previous payments made by the Owner;~~
- ~~.5 Subtract the shortfall, if any, indicated by the Design-Builders in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

~~§ A.1.5.3.3 The Owner and Design-Builders shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builders shall execute agreements in accordance with those terms.~~

~~§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price~~

~~§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builders on account of that portion of the Work for which the Design-Builders has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

~~§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:~~

- ~~.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.~~

Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

- ~~2~~ Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- ~~3~~ Add the Design-Builder's Fee, less retainage of ~~—~~ percent (~~—~~ %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~4~~ Subtract retainage of ~~—~~ percent (~~—~~ %) from that portion of the Work that the Design-Builder self-performs;
- ~~5~~ Subtract the aggregate of previous payments made by the Owner;
- ~~6~~ Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~7~~ Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

~~§ A.1.5.4.3~~ The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with these terms.

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, requirements which extend beyond final payment.

~~§ A.1.5.5.2~~ If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

...

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than ~~—~~ (~~—~~) days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

May 1, 2017.

Portion of Work

Substantial Completion Date

...

Liquidated damages per A141-2014.

PAGE 4

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following: Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.

§ ~~A.3.1.1~~ The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ ~~A.3.1.2~~ The Specifications:

*(Either list the specifications here or refer to an exhibit attached to this Amendment.)*

Section	Title	Date	Pages
---------	-------	------	-------

§ ~~A.3.1.3~~ The Drawings:

*(Either list the drawings here or refer to an exhibit attached to this Amendment.)*

Number	Title	Date
--------	-------	------

§ ~~A.3.1.4~~ The Sustainability Plan, if any:

*(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)*

Title	Date	Pages
-------	------	-------

Other identifying information:

...

Owner Furniture Allowance	\$ 1,250,000
Owner Hardware Allowance	\$ 350,000
Owner Controls Allowance	\$ 650,000
Owner Fire Alarm Allowance	\$ 750,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 125,000
Owner Technology Allowance	\$ 1,645,000
Owner Landscaping Allowance	\$200,000
DB Complete Site Package Allowance	\$2,500,000

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

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User Notes:

(133211982)

...

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015, The Design-Builder's Proposal clarifies the Design-Builder's assumptions and clarifications. The Horry County Board of Education accepts the Proposal as an acceptable interpretation of the Design Requirements.

~~§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:~~

~~§ A.3.1.8 To the extent the Design Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:~~

...

~~.1 Superintendent Socastee Middle School:~~

~~Superintendent: Phil Asslynn~~

~~.2 Project Manager Project Manager: Mike Dickman~~

~~.3 Others~~

~~Assistant Superintendent: Bob Green~~

...

~~SFL+ Architects: Architect, Raleigh NC~~

~~Metcon/TA Loving joint venture: General Contractor, Pembroke NC~~

PAGE 5

~~§ A.5.1 Cost To Be Reimbursed as Part of the Contract~~

~~§ A.5.1.1 Labor Costs~~

~~§ A.5.1.1.1 Wages of construction workers directly employed by the Design Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops:~~

~~§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design Builder's supervisory and administrative personnel when stationed at the site.~~

~~(If it is intended that the wages or salaries of certain personnel stationed at the Design Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

~~§ A.5.1.1.3 Wages and salaries of the Design Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ A.5.1.1.4 Costs paid or incurred by the Design Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary~~



## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:00 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices  
**Attachments:** A312PaymentBond-2010 - Working Draft - 001.docx; A312PerformanceBond-2010 - Working Draft - (3).docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

I'm going to attach the uncompleted forms of bonds to the Ex B for tonight.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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---

**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Sunday, November 22, 2015 6:23 PM  
**To:** Keith R. Powell  
**Subject:** FW: HCS - Revised Invoices

Keith,  
These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

---

**From:** Rick Green  
**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**  
Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666

rgreen@firstfloor.biz

# DRAFT AIA Document A312™ - 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

« »  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

«Horry County School District, South Carolina»«, Political Subdivision of the State of South Carolina»

« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County School District»

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:

« »

None

« »

See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »

« »

« »

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

« »

« »

« »

« »

« »

« »

« »

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

ELECTRONIC COPYING of any portion of this AIA Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

CONTRACTOR AS PRINCIPAL

Company:

*(Corporate Seal)*

Signature:

Name and Title:

Address:

« »« »

« »

SURETY

Company:

*(Corporate Seal)*

Signature:

Name and Title:

Address:

« »« »

« »

# DRAFT AIA Document A312™ - 2010

## Performance Bond

### CONTRACTOR:

(Name, legal status and address)

« »  
« »

### SURETY:

(Name, legal status and principal place of business)

« »  
« »

### OWNER:

(Name, legal status and address)

Horry County Schools District, a political subdivision of the State of South Carolina « »

« »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

Horry County Schools District

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond:



None



See Section 16

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

« »  
« »  
« »

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

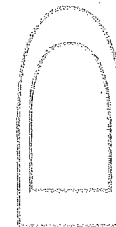
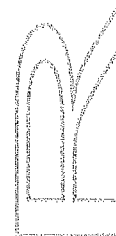
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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.



§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond ~~may~~ must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located ~~and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.~~

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

16.1« Performance of the Construction Contract includes post-occupancy obligations of the Contractor incorporated into the Construction Contract.

16.2 Performance of the Construction Contract includes performance of the responsibilities of the design professionals participating in the Design-Build Construction Contract. »

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:16 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Hang on I need to get the current payment bond

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**Sent:** Sunday, November 22, 2015 6:23 PM  
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**Subject:** FW: HCS - Revised Invoices

Keith,

These are the invoices I plan on submitting. Since the school folks are not talking to us until we get a contract can you tell me what we need to do to officially submit these? If they do wire transfers that is always best for us so we can pay people faster. We have included wire transfer instruction in case they are able to do wire transfers.

Robbie

---

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**Sent:** Sunday, November 22, 2015 6:14 PM  
**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**  
Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666  
[rgreen@firstfloor.biz](mailto:rgreen@firstfloor.biz)

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:17 AM  
**To:** Robbie Ferris  
**Subject:** RE: HCS - Revised Invoices

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Crap. I mean performance bond form.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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Robbie

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**To:** Robbie Ferris  
**Subject:** HCS - Revised Invoices

Here you go!!! I've also attached the wire instructions to move funds into the Firstfloor Energy Positive (HCS Team) account at BB&T.

**Richard A. Green**

Firstfloor Inc.  
4400 Silas Creek Parkway, Ste. 200  
Winston Salem, NC 27104  
Office: (336) 794-2325  
Fax: (336) 768-7666  
[rgreen@firstfloor.biz](mailto:rgreen@firstfloor.biz)

## **Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:18 AM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** 312 performance  
**Attachments:** 651979.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category



# Document A312™ – 2010

## Performance Bond

**CONTRACTOR:**

(Name, legal status and address)

[Redacted]

**SURETY:**

(Name, legal status and principal place of business)

[Redacted]

**OWNER:**

(Name, legal status and address)

Horry County Schools, a political subdivision of the State of South Carolina.

**CONSTRUCTION CONTRACT**

Date:

Amount: \$

Description:

(Name and location)

Horry County Schools

**BOND**

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond:

☐

None

☒

See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

**SURETY**

Company: (Corporate Seal)

Signature:

Name and

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Name and

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:**

[Redacted]

**OWNER'S REPRESENTATIVE:**

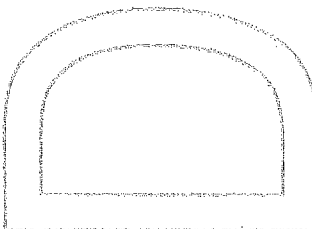
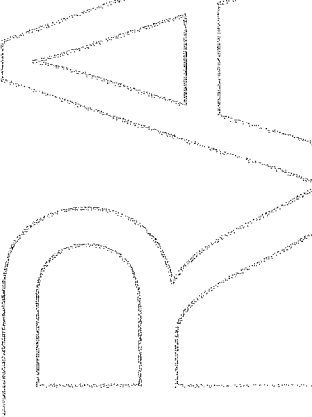
(Architect, Engineer or other party:)

[Redacted]

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.



§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond ~~may~~ must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable. located.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

16.1 Performance of the Construction Contract includes post-occupancy obligations of the Contractor incorporated into the Construction Contract.

16.2 Performance of the Construction Contract includes performance of the responsibilities of the design professionals participating in the Design-Build Construction Contract.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

CONTRACTOR AS PRINCIPAL

Company:

*(Corporate Seal)*

SURETY

Company:

*(Corporate Seal)*

Signature:

Name and Title:

Address:

Signature:

Name and Title:

Address:

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Monday, November 23, 2015 11:19 AM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** A312PaymentBond-2010 - Working Draft - 001.docx.docx (Attachment)  
**Attachments:** A312PaymentBond-2010 - Working Draft - 001.docx.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

A312PaymentBond-2010 - Working Draft - 001.docx.docx (Attachment) EM KRP to Davis, Heinz, Ferris, Wawrzyniak, Peeples, Gardner, Wolfe (payment bond - draft)  
RE: Payment Bond request - Horry County Schools Projects  
From: Keith R. Powell  
To: Danielle Davis; [ahainz@horrycountyschools.net](mailto:ahainz@horrycountyschools.net)

# DRAFT AIA Document A312™ - 2010

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE

LLC, « »« »

333 Fayetteville St., Suite 225

Raleigh, NC 27601

« »

### SURETY:

(Name, legal status and principal place of business)

« »« »

« »

### OWNER:

(Name, legal status and address)

«Horry County School District, South Carolina

«Political Subdivision of the State of South Carolina»

« 335 Four Mile Rd., Conway, SC 29528

843.488.6700 »

### CONSTRUCTION CONTRACT

Date: « »

Amount: \$ « »

Description:

(Name and location)

«Horry County School District»[one for each]

« »

### BOND

Date:

(Not earlier than Construction Contract Date)

«November 19, 2015 »

Amount: \$ « »

Modifications to this Bond:



None



See Section 18

### CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

### SURETY

Company: (Corporate Seal)

Signature:

Name and « »« »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »« »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

« »

« »

« »

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

Executive Director of Facilities

«Horry County Schools

»

« »

« »

« »

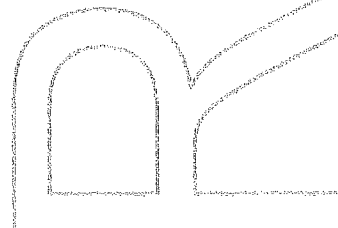
« »

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

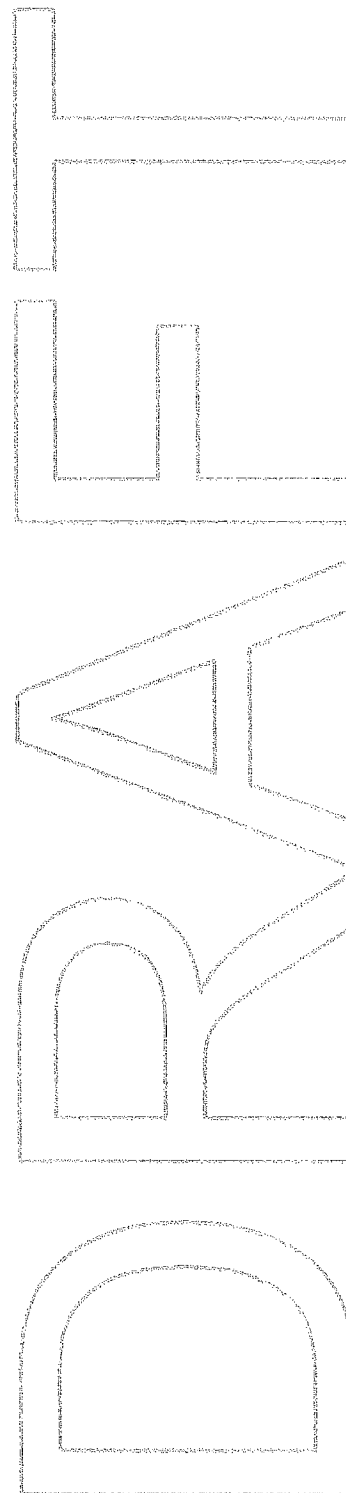
This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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« »



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User Notes:

(1630695778)

PAPR - 001788

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract; architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »As used in § 16.2, the phrase "to furnish labor, materials or equipment for use in the performance of the Construction Contract" includes the entire scope of the term "improve" as defined in S.C. Code § 26-6-10(2), which term "means and includes any design or other professional or skilled services furnished by architects, engineers, land surveyors, and landscape architects."

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

« »« »

« »

Signature:

Name and Title:

Address:

« »« »

« »



## Sheri L. Wainscott

---

**From:** Nancy Zablud <NZablud@sfla.biz>  
**Sent:** Tuesday, November 24, 2015 12:09 PM  
**To:** Keith R. Powell  
**Subject:** Executed Horry County Contracts A141, Exhibit A and Exhibit B

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Keith,

When you have a moment, could you please forward the executed copy of the entire contract with Exhibit A and B. This will allow me to continue with the A143 and C441 to ensure I have all the final language.

Thanks so much.



Nancy Zablud, CPA CGMA MBA  
Controller  
Capital Bank Plaza  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Main: 919-573-6350  
Cell: 919-818-2879  
Fax: 919-573-6355  
[nzablud@sfla.biz](mailto:nzablud@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

---

**From:** Robbie Ferris  
**Sent:** Tuesday, November 17, 2015 9:56 AM  
**To:** Nancy Zablud; Mike Wawrzyniak; Kenneth J. Peebles; Aaron Thomas; Mike Richter  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe  
<[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz ([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))"  
<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner <[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>,  
Kenneth Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>, "[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)"

<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>

Cc: "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>

Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell

Childs & Halligan, P.A.

Columbia, South Carolina

[www.childs-halligan.com](http://www.childs-halligan.com)

(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

**Sheri L. Wainscott**

---

**From:** Clark, Brad <Brad.Clark@BBandT.com>  
**Sent:** Tuesday, November 24, 2015 5:05 PM  
**To:** Robbie Ferris  
**Cc:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B - Builder's Risk Coverage

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Robbie,

I'm available Tuesday and Friday next week to meet with HCS staff to review insurance options.

Thanks,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

---

**From:** Robbie Ferris [mailto:RFerris@sfla.biz]  
**Sent:** November 24, 2015 4:49 PM  
**To:** Clark, Brad  
**Cc:** Keith R. Powell  
**Subject:** Re: HCS | Exhibit B - Builder's Risk Coverage

Brad

Would it make sense for you to meet with Hcs staff About insurance options next week Say wednesday

Sent from my iPhone

On Nov 24, 2015, at 2:03 PM, Clark, Brad <[Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com)> wrote:

Keith,

I have received two quotes for Builder's Risk coverage from Zurich and AmRisc, and I should receive a third quote today from ACE. I will provide you with a spreadsheet comparing the three options and allow for HCS to compare the coverage to the coverage available through the IRF. I can also provide sample coverage forms.

A large factor in determining the cost of the Builder's Risk insurance is the # of months that coverage will be needed. Do you know if HCS will want Builder's Risk coverage in force immediately or would like to wait until vertical construction/subsurface work to accommodate vertical construction begins?

After review of the IRF coverage form, causes of loss form, and the flood and earthquake endorsements, I still have the same concerns as outlined in our original correspondence for protection of the Design-Builder.

- Damage to the project by a subcontractor would be covered by the IRF's Builder's Risk policy; however, the Builder's Risk insurer may look to 3<sup>rd</sup> party coverage to pay the claim which could lead to a delay on the project. We recommend providing the Design-Builder and subcontractors with a waiver of subrogation on the Builder's Risk policy as all covered claims will be First Party claims and should be settled much more swiftly.
- Materials at temporary storage facilities are not covered on the IRF policy.
- Materials must be within 100 feet of the described premises to be covered.
- Since the Design-Builder and subcontractors of all tier will not be Named Insured's on the IRF's policy, the word "you" and "your" as used in the policy only refer to HCS as a Named Insured.
  - Covered Property is defined in 1.b.(2) as "your building material and supplies used for construction". If HCS has not paid Firstfloor/their subcontractors for materials located at the site, it can be argued that those materials are considered Property of Others.
  - There is coverage limitation of \$2,500 of Property of Others
- Delay is not covered on the IRF policy. If a covered cause of loss on the Builder's Risk policy damages one or more schools, would HCS want insurance proceeds to pay for the extra expense to accommodate those students that were to occupy these schools?
- The endorsements that you provided indicate that coverage will extend for Flood and Quake.
- Can you please confirm that the deductibles for Wind, Flood, and Quake will be \$1,000 as outlined in the coverage overview?

Thank you,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 18, 2015 2:20 PM  
**To:** Clark, Brad; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** RE: HCS | Exhibit B

I'm talking to them about a lot of last minute edits this afternoon and will include the builder-provided BR policy as a topic on the list. The terms provide for FFEP to place coverages after execution so we have a few days, although of course next week is truncated for business purposes.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)

(803) 254-4035

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**From:** Clark, Brad [<mailto:Brad.Clark@BBandT.com>]  
**Sent:** Wednesday, November 18, 2015 2:17 PM  
**To:** Keith R. Powell; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** RE: HCS | Exhibit B

Thank you Keith.

I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

Thanks,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 18, 2015 12:56 PM  
**To:** Clark, Brad; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** FW: HCS | Exhibit B  
**Importance:** High

Attached info for your use.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 12:40 PM

**To:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,  
*Ara*

Ara Heinz | Procurement Services | ☎ P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Tuesday, November 17, 2015 6:39 PM  
**To:** Ara Heinz  
**Subject:** Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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Begin forwarded message:

**From:** "Clark, Brad" <[Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com)>  
**Date:** November 17, 2015 at 5:30:59 PM EST  
**To:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Subject:** RE: HCS | Exhibit B

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

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**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 17, 2015 1:22 PM  
**To:** Robbie Ferris  
**Cc:** Clark, Brad  
**Subject:** RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Tuesday, November 17, 2015 12:22 PM  
**To:** Keith R. Powell  
**Cc:** Clark, Brad ([Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com))  
**Subject:** FW: HCS | Exhibit B

Keith,  
Apparently our insurance company sent me an email about this a few days ago that I never sent you. Sorry!!  
Feel free to call Brad directly to discuss his concerns.  
Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.

- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

---

**From:** Peeples, Kenneth  
**Sent:** November 17, 2015 10:30 AM  
**To:** Blanchard, Kathy; Clark, Brad  
**Subject:** Fwd: Hcs

Ken Peeples  
919-281-4510 office  
919-215-9779 cell  
Via iPhone

Begin forwarded message:

**From:** Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zabrud <[NZabrud@sfla.biz](mailto:NZabrud@sfla.biz)>, Mike Wawrzyniak  
<[mwawrzyniak@sfla.biz](mailto:mwawrzyniak@sfla.biz)>, "Kenneth J. Peeples"  
<[kpeeples@bbandt.com](mailto:kpeeples@bbandt.com)>, Aaron Thomas  
<[athomas@metconus.com](mailto:athomas@metconus.com)>, Mike Richter  
<[mrichter@taloving.com](mailto:mrichter@taloving.com)>  
**Subject:** Fwd: Hcs



Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))"  
<[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe  
<[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara  
Heinz ([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))"  
<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner  
<[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>, Kenneth  
Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>,  
"rmaxey@horrycountyschools.net"  
<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>  
**Cc:** "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review &  
comment. Waiting on HCS comments on 141 and  
Ex A.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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above immediately.

On Nov 17, 2015, at 7:43 AM, Robbie Ferris  
<[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

Can you send the latest version of  
the contract for review

Robbie

Sent from my iPhone

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<Builders Risk Considerations.pdf>